

To: CN=Don Wayne/OU=DC/O=USEPA/C=US@EPA[]
Cc: CN=Kelly Gable/OU=R3/O=USEPA/C=US@EPA;CN=Lynda Hall/OU=DC/O=USEPA/C=US@EPA[]; N=Lynda Hall/OU=DC/O=USEPA/C=US@EPA[]
Bcc: []
From: CN=Stephen Sweeney/OU=DC/O=USEPA/C=US
Sent: Tue 11/27/2012 9:03:07 PM
Subject: Re: Question on CZARA 319 penalty math & heads-up that a legal review of a document is needed by 12/7
<http://www.epa.gov/r10earth/tmdl.htm>
Carlin.Jayne@epamail.epa.gov
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(embedded image)

Hmmm ... clever, but maybe not quite on the money.

Ex. 5 - Attorney Client

Stephen J. Sweeney
sweeney.stephen@epa.gov
202-564-5491
202-564-5477 (fax)

From: Don Wayne/DC/USEPA/US
To: Stephen Sweeney/DC/USEPA/US@EPA
Cc: Kelly Gable/R3/USEPA/US@EPA, Lynda Hall/DC/USEPA/US@EPA
Date: 11/27/2012 03:54 PM
Subject: Re: Question on CZARA 319 penalty math & heads-up that a legal review of a document is needed by 12/7

Stephen,

Thanks for that answer that only a lawyer could love. :-)
I do understand and appreciate what you are saying, though.

Ex. 5 - Attorney Client

Don

From: Stephen Sweeney/DC/USEPA/US
To: Don Wayne/DC/USEPA/US@EPA
Cc: Kelly Gable/R3/USEPA/US@EPA, Lynda Hall/DC/USEPA/US@EPA
Date: 11/27/2012 03:33 PM
Subject: Re: Question on CZARA 319 penalty math & heads-up that a legal review of a document is needed by 12/7

Don,

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

I'm available to discuss if that would be more helpful.

Steve

Stephen J. Sweeney
sweeney.stephen@epa.gov
202-564-5491
202-564-5477 (fax)

From: Don Waye/DC/USEPA/US
To: Stephen Sweeney/DC/USEPA/US@EPA
Cc: Lynda Hall/DC/USEPA/US@EPA, Kelly Gable/R3/USEPA/US@EPA
Date: 11/27/2012 01:24 PM
Subject: Question on CZARA 319 penalty math & heads-up that a legal review of a document is needed by 12/7

Stephen,

Ex. 5 - Attorney Client

Region 10 and NOAA have the lead on developing the letter on the viability of OR's TMDL approach for meeting the remaining management measures called for in the settlement agreement, and I have contributed some to the effort. Our plan is to get a draft that's ready for legal review by Nov. 30 (this Friday). Kelly Gable (detailed from Region 3) will review it on behalf of Region 10 and NOAA's lawyer (either Stephanie Campbell or her supervisor) will review the letter for them. I assume you will want to review the letter, too. Assuming we can get it to you by this Friday, would you be able to commit to a review by Dec. 7th? Right now it's a 3 page letter with a 5 page enclosure and it shouldn't increase too much more in size. I have attached the current draft (not quite ready for legal review). The goal is to send out the final signed letter by mid December, as a number of critical folks will be out of the office the last half of December. The OR CZARA settlement agreement calls for the letter to go out by Dec. 31, 2012. [attachment "EPA NOAA Assessment Dec 2012 11-26-12.docx" deleted by Stephen Sweeney/DC/USEPA/US]

Don Waye

U.S. Environmental Protection Agency
Nonpoint Source Control Branch (OWOW/AWPD)

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----- Forwarded by Don Waye/DC/USEPA/US on 11/27/2012 01:00 PM -----

From: Don Waye/DC/USEPA/US
To: David Powers/R10/USEPA/US@EPA
Cc: Allison Castellan <allison.castellan@noaa.gov>, Jayne Carlin/R10/USEPA/US@EPA
Date: 11/27/2012 12:42 PM
Subject: Re: fund withholding language

Ex. 5 - Attorney Client

Here's the exact statutory language:

(3) Withholding coastal management assistance. If the Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the Secretary shall withhold for each fiscal year until such a program is submitted a portion of grants otherwise available to the State for the fiscal year under section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455], as follows:

- (A) 10 percent for fiscal year 1996.
- (B) 15 percent for fiscal year 1997.
- (C) 20 percent for fiscal year 1998.
- (D) 30 percent for fiscal year 1999 and each fiscal year thereafter.

The Secretary shall make amounts withheld under this paragraph available to coastal States having programs approved under this section.

(4) Withholding water pollution control assistance. If the Administrator finds that a coastal State has failed to submit an approvable program as required by this section, the Administrator shall withhold from grants available to the State under section 319 of the Federal Water Pollution Control Act [33 USC § 1329], for each fiscal year until such a program is submitted, an amount equal to a percentage of the grants awarded to the State for the preceding fiscal year under that section, as follows:

- (A) For fiscal year 1996, 10 percent of the amount awarded for fiscal year 1995.
- (B) For fiscal year 1997, 15 percent of the amount awarded for fiscal year 1996.
- (C) For fiscal year 1998, 20 percent of the amount awarded for fiscal year 1997.
- (D) For fiscal year 1999 and each fiscal year thereafter, 30 percent of the amount awarded for fiscal year 1998 or other preceding fiscal year.

The Administrator shall make amounts withheld under this paragraph available to States having programs approved pursuant to this subsection.

From: David Powers/R10/USEPA/US
 To: Allison Castellan <allison.castellan@noaa.gov>, Don Wayne/DC/USEPA/US@EPA
 Cc: Jayne Carlin/R10/USEPA/US@EPA
 Date: 11/27/2012 12:28 PM
 Subject: fund withholding language

Ex. 5 - Deliberative

David Powers
 Regional Manager for Forests and Rangelands
 USEPA Region 10, OOO
 805 SW Broadway, Suite 500
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 503-326-5874
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-----Jayne Carlin/R10/USEPA/US wrote: -----

To: Allison Castellan <allison.castellan@noaa.gov>

From: Jayne Carlin/R10/USEPA/US

Date: 10/02/2012 06:18PM

Cc: David Powers/R10/USEPA/US@EPA, Don Waye/DC/USEPA/US@EPA, Jennifer Wu/R10/USEPA/US@EPA

Subject: Re: Drafting Dec Settlement Letter to ODEQ RE: TDMLs

Hi Allison,

I sent out the reminder of action items. We did give ODEQ until Oct 12 to provide us with the information so I did not think it was fair to change the deadline on them when it is so close anyway. I suspect that we will not have enough information to make a determination whether implementation of the Oregon Coastal TMDL Approach in the Mid-Coast Sub-basins is likely to result in actions that will achieve and maintain WQS and 2) whether Oregon's plan for developing and updating TMDLs for all sub-basins in the CNPCP management area using the Oregon Coastal TMDL Approach could satisfy the outstanding forestry condition so it may be a simple kind of letter. What are your thoughts, Jenny or Dave?

Jayne

Jayne Carlin, Watersheds Unit
US EPA, Region 10
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<http://www.epa.gov/r10earth/tmdl.htm>

Allison Castellan ---10/02/2012 01:39:41 PM---Jayne, I was thinking the Oct. 18th fed call would be focused more on prepping for our next state call

From: Allison Castellan <allison.castellan@noaa.gov>

To: Jayne Carlin/R10/USEPA/US@EPA,

Cc: David Powers/R10/USEPA/US@EPA, Don Waye/DC/USEPA/US@EPA, Jennifer Wu/R10/USEPA/US@EPA

Date: 10/02/2012 01:39 PM

Subject: Re: Drafting Dec Settlement Letter to ODEQ RE: TDMLs

Jayne, I was thinking the Oct. 18th fed call would be focused more on prepping for our next state call (immediately following) so it would probably be good to have a focused discussion on the letter sooner. As Jenny reminded everyone, we did ask the state to provide us with any additional info the the mid-coast TMDL/bmps by the end of Sept/early Oct. for us to consider as part of this letter. Now would be a good time to remind them of that.

Jayne, since you're the keeper of action items from the meetings, is that something you could do? I would say we'd need info from the state by Oct. 10th at the latest.

Allison

On Tue, Oct 2, 2012 at 3:54 PM, Jayne Carlin <Carlin.Jayne@epamail.epa.gov> wrote:

Hi Allison,

We already have a call scheduled for Oct 18. Should we schedule another meeting a week earlier? I will be out of town Oct 10-12.

On the action items:

By October 12, OR DEQ, with assistance from the Mid-Coast TMDL Team, will provide any information available that will help

NOAA/EPA prepare a written assessment (especially information on specific BMPs) to OR DEQ with copy to the plaintiff on 1) whether implementation of the Oregon Coastal TMDL Approach in the Mid-Coast Sub-basins is likely to result in actions that will achieve and maintain WQS and 2) whether Oregon's plan for developing and updating TMDLs for all sub-basins in the CNPCP management area using the Oregon Coastal TMDL Approach could satisfy the outstanding forestry condition.

Jayne

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Allison Castellan ---10/02/2012 11:47:57 AM---All-- As you know, per the settlement agreement, we owe ODEQ (with cc to

From: Allison Castellan <allison.castellan@noaa.gov>
 To: David Powers/R10/USEPA/US@EPA, Jayne Carlin/R10/USEPA/US@EPA, Don Waye/DC/USEPA/US@EPA,
 Cc: Jennifer Wu/R10/USEPA/US@EPA
 Date: 10/02/2012 11:47 AM
 Subject: Drafting Dec Settlement Letter to ODEQ RE: TDMLs

All--

As you know, per the settlement agreement, we owe ODEQ (with cc to Plaintiff) a letter providing an initial assessment of the adequacy of OR's implementation-ready TMDL approach for meeting CZARA requirements by Dec. 31, 2012. According to the settlement agreement, the written statement must assess whether:

1. implementation of the IR-TMDL for the Mid-Coast Basin, including safe harbor BMPs, is likely to result in actions to achieve and maintain water quality standards, and
2. the IR-TDML plan to developing/updating TMDLs for all subbasins within the 6217 mgnt area could satisfy the outstanding additional MMs for forestry condition.

We are to based our assessment on:

1. OR's July 2, 2010 AG's opinion
2. ODEQ's July 26, 2010 commitment letter
3. The state's schedule for implementing IR-TMDL's throughout the 6217 mgnt area (NOAA/EPA requests on Mar. 31, 2011; state provided July 2011)
4. Completed Mid-Coast Basin TMDL (requested by June 30, 2012; still under development)
5. Other documents

The settlement agreement also notes that EPA and NOAA shall consider any comments Plaintiff may have submitted with respect to ODEQ's proposed TMDLs and BMPs.

Since this will need to go through legal review and joint clearance at EPA and NOAA, we should start drafting that letter soon.

It would be good for us to touch base to discuss a framework for this letter so we can get started. Please let me know your availability for a call Thurs Oct. 4th-Fri Oct. 12th. (Remember Mon. Oct. 8th is a holiday) so I can set something up.

Thanks!

Allison

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